

ENTERED

August 31, 2016

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISIONUNITED STATES OF AMERICA,
Plaintiff,

v.

BENITO RODRIGUEZ,
Defendant.§
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§Cr. No. 2:12-534-1
(CA. No. 2:16-CV-275)**ORDER**

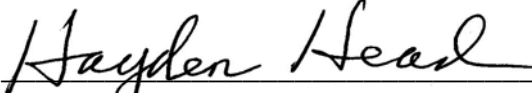
Benito Rodriguez filed a motion to vacate, set-aside or correct sentence pursuant to 28 U.S.C. § 2255 in which he challenged the continued validity of the offenses used to enhance his conviction for aiding and abetting a felon in possession pursuant to 18 U.S.C. § 924(e). D.E. 66. The government concedes and the Court FINDS that at least one of his prior offenses no longer qualifies as a predicate offense¹ after *Johnson v. United States*, 135 S.Ct. 2551 (2015), and that Rodriguez should be resentenced. D.E. 70. The Court GRANTS Rodriguez' motion to vacate (D.E. 66) and VACATES his sentence of 180 months imprisonment.

Rodriguez was originally represented by appointed counsel in these proceedings. The Court APPOINTS CJA counsel Travis Wiley Berry to represent Rodriguez on resentencing.

¹ One of Rodriguez' predicate convictions was possession of a deadly weapon in a penal institution which qualified as a violent crime only under the residual clause and does not qualify under the use of force clause, nor is it an enumerated offense. Another of his convictions, evading arrest in a motor vehicle similarly no longer qualifies. See D.E. 45, ¶¶ 30, 51, 59.

The Clerk is instructed to serve a copy of this Order on the parties and upon newly appointed counsel.

It is so ORDERED this 31 day of August, 2016.


HAYDEN HEAD
SENIOR U.S. DISTRICT JUDGE